

STATE OF MICHIGAN
COURT OF APPEALS

In re M. M. GLENN, Minor.

UNPUBLISHED
September 13, 2016

No. 332046
St. Clair Circuit Court
Family Division
LC No. 14-000215-NA

Before: CAVANAGH, P.J., and SAAD and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (parent failed to provide proper care or custody), (j) (child will likely be harmed if returned to respondent's care), and (n)(ii) (violation of criminal statute involving the use of force or threat of force and subject to sentencing as a habitual offender). We affirm.

Respondent argues that the trial court clearly erred in concluding that the statutory grounds were proven by clear and convincing evidence and that termination was in the best interests of the child. We disagree.

In a termination proceeding, the petitioner has the burden of proving at least one statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). If the petitioner establishes a statutory ground for termination, the trial court must terminate parental rights if termination is in the child's best interests. MCL 712A.19b(5). This Court reviews "for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Further, this Court reviews for clear error the trial court's decision on the best-interest issue. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Clear error occurs if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Mason*, 486 Mich at 152 (quotation marks and citations omitted). This Court gives deference to the trial court's special opportunity to assess the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court did not err in concluding that clear and convincing evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), which is permitted if at least 182 days elapsed since an initial dispositional order and the "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be

rectified within a reasonable time considering the child's age." At the time of the adjudication, respondent had been incarcerated following his conviction involving a drug raid at the home he shared with the minor child's mother, who was pregnant with the child at the time. Respondent continued to be incarcerated by the time of the termination hearing with no certain date scheduled for his release. Respondent testified that he would not be released before July 3, 2017, at the earliest. The trial court found that there was a lack of evidence that imminent parole was likely because respondent had not taken the necessary steps to achieve parole at the earliest time. The trial court noted that respondent was a repeat parole violator and recognized it would take time for him to be able to care for his child, who had never been in respondent's care. Given these circumstances, the trial court did not clearly err in terminating respondent's parental rights under subsection (3)(c)(i). Because termination was proper under this subsection, we need not consider the remaining three statutory grounds for termination on appeal. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

In any case, respondent's parental rights were also properly terminated under MCL 712A.19b(3)(g), which provides for termination if the parent "without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Respondent was clearly unable to properly care for the child. Despite his participation in residential treatment twice and his participation in outpatient drug treatment, respondent continued to have unresolved substance abuse issues. Respondent's involvement with illegal drugs led to his arrest in 2014, before the child's birth. Respondent also had mental health issues that were aggravated by his substance use. Both his substance use and mental health issues would have made parenting a special needs child more challenging and impacted his ability to provide proper care for her. Respondent had not worked since 2011. He hoped that when he was released from prison his mother would be able to get him a job where she worked if he could pass a drug test, but he had no concrete employment prospects. He was also without independent housing and planned to live with his mother upon his release from prison. There was no evidence respondent could independently care for the child. Moreover, respondent's ability to care for the child was questionable because he had never cared for her before his incarceration. Respondent was returned to prison after being on parole, his release date was uncertain, and it would take time for him to be able to provide for his child upon his release. Additionally, respondent's propensity toward criminality suggested he could not provide a stable home for the child. Given these circumstances, the trial court did not clearly err in terminating respondent's parental rights under subsection (3)(g).

With regard to termination under MCL 712A.19b(3)(j) and (n)(ii), the trial court properly concluded that the child would be at risk of harm because she has special needs and requires extra care and attention from her caregiver. This child needs breathing treatments and frequent doctor appointments. Respondent has no experience dealing with children and was not in a position to care for a special needs child. Given the child's medical needs, and the lack of evidence respondent was equipped to handle them, the child would have been at risk of harm in respondent's care. See MCL 712A.19b(3)(j). Moreover, respondent has an extensive criminal history dating back to 1998 and had served four separate prison sentences since then. Respondent was on parole when he pleaded guilty to three felony offenses in 2014, which led to his incarceration at the time of the child's adjudication. He was convicted of assault with intent to do great bodily harm, felonious assault, and carrying a firearm with unlawful intent. These

crimes all involve elements of force or threat of force. See MCL 712A.19b(3)(n)(ii). As the trial court noted, the sentences he was currently serving had been enhanced by the habitual offender statutes. Thus, the trial court did not clearly err in finding sections (3)(j) and (n)(ii) established by clear and convincing evidence.

Respondent argues that his incarceration was the primary ground for termination of his parental rights and that his incarceration alone was insufficient grounds to terminate parental rights. He claims he was not afforded the opportunity to participate in the case service plan, and that he completed every class available to him in prison. Respondent argues that there is no evidence he was presented a parent-agency agreement. These claims are without merit. The foster care worker testified that respondent was presented with a treatment plan requiring him to obtain housing and income and to participate in parenting and life skills classes, counseling, and a psychological evaluation. The trial court's file contains a document filed in October 2014 recommending these services. Each of the updated service plans refer to the parent-agency agreement. These updated service plans indicate that the caseworker mailed respondent information and pictures of the child and requested that he notify the agency once he completed services. The updated service plan presented at the June 22, 2015 hearing shows that respondent was provided a copy of the most recent treatment plan, which he signed and returned. Thus, the caseworker made consistent efforts throughout the case to communicate and provide services to respondent.

Moreover, although the caseworker was unable to provide direct services to respondent while he was in prison, the record shows that she encouraged respondent to participate in the services offered by the prison and that he completed life skills and a substance abuse program, as well as participated in NA/AA. The limitations in respondent's ability to participate in his treatment plan were caused by his criminal activity and incarceration, not because he was not presented with a treatment plan or provided any access to services. The issue was that respondent could not do enough while he was in prison, not that his parental rights were terminated because he was in prison. Further, there is no indication that respondent was unaware of what was required of him. Respondent's contention that the caseworker had limited interaction with him is unpersuasive. Respondent never responded to the caseworker's letters or asked for more assistance facilitating specific services.

Contrary to respondent's claim, this case is distinct from *Mason*, 486 Mich 142, because in this case the petitioner did not fail to involve respondent in the reunification process or fail to provide reunification services. *Id.* at 156-159. Unlike in *Mason*, termination did not result from respondent's "mere present inability to personally care for [his] children as a result of incarceration." *Id.* at 160. In this case, termination of his parental rights was based on more than just respondent's incarceration. The trial court terminated his parental rights because respondent was not a fit parent and could not provide a stable or safe home. Respondent also argues that he was never considered for future placement of the child. It was not, as respondent argues, that he was never seriously evaluated as the child's caregiver. Instead, the record shows that placement with respondent was not considered because he could not demonstrate that he was a suitable caregiver. Placement with respondent's mother was also not an option because he planned to live with her upon his release from prison.

Finally, the trial court did not clearly err in its best-interest determination. The trial court properly found that the child is medically fragile and there was no bond between respondent and

the child. Given respondent's significant history of criminality, and the fact that respondent had not demonstrated he could provide a safe or stable home environment, termination of his parental rights was in the child's best interests. Likewise, respondent's mental health issues, substance use, and the child's special needs compounded the challenges that respondent would have to face if allowed to parent. There was no evidence that respondent had the parenting skills or ability to parent this child given his incarceration.

Respondent argues the trial court placed a heavy emphasis on the medical needs of the child even though the record shows that the child had made progress and there were no concerns. However, the child's caregiver will have additional medical appointments and concerns to manage. Respondent is not in a position now or in the foreseeable future to attend to the child's needs. This child deserves stability that respondent is unable to provide her. Thus, the trial court did not clearly err in concluding that termination was in the child's best interests.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Karen M. Fort Hood